

Remarks

Claims 6, 11, 16 and 27-33 were pending. Claim 6 has been amended to include the limitation of claim 16, specifying that the method is used in structures which are infested with general household pests or which are expected to become infested with such pests. Accordingly, claim 16 has been cancelled.

In the latest Office Action, claims 1, 6, 11, 16 and 27-33 were rejected under 35 USC 103(a) as obvious over the combined teachings of Sembo (US Patent 6,555,092) in view of Selby et al (US Patent Application 2004/0053786) and Lahm et al (US Patent Application 2004/0198984). Reconsideration of this rejection is requested, in view of the arguments presented below.

The Presently Claimed Invention

The presently claimed invention is a method of controlling household pests employing a composition comprising i) from 0.001% by weight to 0.06% by weight bifenthrin and ii) from 0.001% by weight to 0.20% by weight of a second insecticide selected from the group consisting of imidacloprid, thiamethoxam, and clothianidin. Such compositions were discovered to exhibit unexpected results with respect to the two important features of general household pest control: (a) knockdown – quick, short term immobilization of such pests; and (b) mortality – death of such pests. See, in this regard, the data in Tables 1 – 18 in the instant specification. Both of these features are important as home owners want to see a rapid debilitating effect on such insects as well as high mortality.

This method is not obvious from the combined teachings of the references cited by the Examiner.

The Rejection Under 35 USC 103(a)

All of the claims were rejected as obvious from the combined teachings of Sembo in view of Selby and Lahm.

Sembo et al is directed to synergistic pesticidal compositions containing 1-methyl-2-nitro-3-[(3-tetrahydrofuryl)methyl]guanidine (common name dinotefuran) and N-methyl-2-pyrrolidone. These are essential ingredients in the formulations of Sembo. At column 2 lines 20

-23 Sembo indicates that the compositions may contain other components including “an antioxidant, emulsifier, other pesticidal compound, pest repellent compound, synergist or the like”. Sembo then goes on to list approximately 50 “other pesticidal compounds” or classes of pesticidal compounds as candidates to be included with the synergistic combination. Within the list are bifenthrin (as one of 19 pyrethroids) and thiamethoxam (as one of 4 neonicotinoids).

Nothing in Sembo discloses or suggests testing the “other pesticidal compounds” alone or in any combination to control any pests. All that is disclosed is that bifenthrin and thiamethoxam were known as insecticides at the time Sembo’s application was filed.

The Examiner attempts to overcome this deficiency of Sembo by relying on the combined teachings of Selby and Lahm. As explained below these references do not overcome the deficiency of Sembo. They are just other examples of references where lists of known insecticides include the specific compounds utilized by the present Applicants in their invention.

Selby et al is directed to certain novel insecticidal 1,8-naphthalenedicarboxamides. In paragraph 184, Selby et al discloses that such compounds can be employed in combination with “other biologically active compounds” such as insecticides and includes a lengthy laundry list of 90 insecticides, including bifenthrin, imidacloprid, and thiamethoxam. There is no suggestion or disclosure in Selby et al that any of the other insecticides could be employed in the absence of a 1,8-naphthalenedicarboxamide, much less that a combination of bifenthrin with imidacloprid or thiamethoxam would produce the unexpectedly desirable results discovered by Applicants.

Lahm et al is similar. It is directed to certain novel anthranilamides which exhibit arthropodicidal activity. It also contains boilerplate language stating the the novel compounds can be combined with “other biologically active compounds” including with other known insecticides. Approximately 90 insecticides are included in the listing in paragraph 238. There is no suggestion or disclosure in Lahm et al that any of these other insecticides could be employed in the absence of an anthranilamide, much less that a combination of bifenthrin with imidacloprid or thiamethoxam would produce the unexpectedly desirable results discovered by Applicants.

In conclusion, it is submitted that Sembo et al, Selby et al and Lahm et al taken together, do not suggest the presently claimed invention. Sembo et al requires the presence of a two component synergistic combination; Selby et al requires the presence of a 1,8-naphthalenedicarboxamide; while Lahm et al requires the presence of an anthranilamide. One of

skill in the art would have no motivation from a reading of these references to exclude such required compounds; much less to select bifenthrin as one component and either imidacloprid, thiamethoxam or clothianidin as a second component for use in the method of controlling general household pests covered by the present claims.

As further support for the rejection the Examiner stated that:

“Testing of the likely combinations, of a specific number of actives, is seen as standard operating procedure to maximize effects.”;

“The required amounts determinable by the skilled artisan.”;

“The particular active combinations & concentrations are then a matter of testing to determine the optimum combination to achieve desired effect on a particular species of concern.”;

“All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects.”

None of these statements supports the conclusion that the invention would have been obvious from the combined teachings of the references relied upon. To get from the teachings of those references to the present invention required inventive activity, not simple routine testing.

Reconsideration of the rejection of record and allowance of the current claims are respectfully requested

Respectfully submitted,

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